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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/609,320	06/30/2003	John Forcillo	2626-0003	7347

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EXAMINER

NGUYEN, TAM M

ART UNIT	PAPER NUMBER
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3764

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	12/22/2006	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary

Application No.

10/609,320

Applicant(s)

FORCILLO, JOHN

Examiner

Tam Nguyen

Art Unit

3764

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 April 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 9-38 is/are pending in the application.
- 4a) Of the above claim(s) 10 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 11-15, 17 and 18 is/are allowed.
- 6) ☒ Claim(s) 9, 16 and 19-38 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Withdrawal of Final Rejection

1. After further review of the prior art, the finality of the last Office Action was reconsidered and the finality of that action is withdrawn.

Drawings

2. The replacement drawings received on December 19, 2005 are acceptable.

Double Patenting

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claim 9 is rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claim 1 of U.S. Patent No. 6,612,970. Although the conflicting claims are not identical, they are not patentably distinct from each other because claim 1 discloses the same subject matter as claim 9 except for the functional

Art Unit: 3764

language regarding the "residual resiliency" of the spring. Since both springs allow for gradual brake adjustment, a quick brake application and a quick brake removal via identical springs and cooperating elements, the spring of claim 1 inherently also includes a residual resiliency.

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 16, 19-30, 32-35 and 37 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 16 recites the limitation "said actuating member" in line 3. There is insufficient antecedent basis for this limitation in the claim.

Claim 19 recites the limitation "the friction pad" and "the flywheel" in lines 2 and 3 respectively. There is insufficient antecedent basis for these limitations in the claim.

Note, the preamble merely discloses a biasing mechanism **for use** with an exercise bicycle having a friction pad and a flywheel. The components of the exercise bicycle have not been positively recited as being part of the invention. Claims 20-25 are also rejected for being dependent on a rejected base claim.

Claim 26 recites the limitation "the friction brake", "the flywheel" and "The positioning of said rod" in lines 3-5 respectively. There is insufficient antecedent basis for these limitations in the claim. Claims 27-30 are also rejected for being dependent on a rejected base claim.

Art Unit: 3764

Claim 32 recites the limitation "the flywheel", "the friction pad", "the positioning of said rod" and "the force to be applied onto the flywheel" in lines 3-5. There is insufficient antecedent basis for these limitations in the claim. Claims 33-35 are also rejected for being dependent on a rejected base claim.

Claim 37 recites the limitation "the flywheel", "the friction pad", "the positioning of said rod" in lines 4-5. There is insufficient antecedent basis for these limitations in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 31, 32, 36-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Swift (6,491,606).

5. As to claim 31, Swift discloses an adjustable exercise bicycle comprising a frame (2) including a rotatably mounted wheel (4), a friction member (18) engageable in friction contact with the wheel, and a tensioning mechanism acting on the friction member for applying variable restraining forces to said wheel, said tensioning mechanism including a biasing member (6) positioned to permit the tensioning mechanism to be displaced away from the flywheel to release force on said friction member (see Fig. 2e & Col. 7, lines 40-61).

6. As to claims 32 and 36, Swift discloses a tensioning mechanism comprising a rod (17), a member (18) permitting adjustment of a force between a flywheel and a friction

Art Unit: 3764

pad and a resilient element (6) provided on the rod above the member to permit force to be applied onto the flywheel and to permit at least a portion of the force on the flywheel to be released (see Fig. 2e). Swift also discloses that the resilient member permits/does not hinder the rod to be pulled to release the force on the flywheel (see Fig. 2e).

7. As to claims 37, Swift discloses a tensioning mechanism comprising a rod (17), a member (96) permitting adjustment of a force between a flywheel and a friction pad (18) and a resilient element (6) provided on the rod above the member (see Fig. 2e).

8. As to claim 38, Swift discloses an adjustable exercise bicycle comprising a frame (2) including a rotatably mounted flywheel (4), a friction pad (18) positioned above the flywheel and a tensioning assembly mounted on the frame to apply force onto the friction pad wherein the assembly includes a resilient member (6) positioned to permit the tensioning assembly to be moved to release force on said friction pad (see Fig. 2e).

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 19, 24 and 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Chen (5,466,203).

9. As to claim 19, Chen discloses a biasing mechanism comprising a force-transmitting member (242) operatively linked to a resistance pad (23) and displaceable

Art Unit: 3764

for adjusting contact pressure of the resistance pad against a loadwheel/flywheel (12) and a biasing member (244) normally urging the force transmitting member toward the resistance pad wherein the biasing member can be elastically deformable away from a rest position by displacing the force transmitting member away from the flywheel to reduce contact pressure between the pad and the flywheel (see Figs. 2 & 3). Chen does not disclose that the resistance pad is a friction pad. The examiner takes Official Notice that the prior art includes resistance pads that are friction pads. At the time of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Chen's magnetic resistance pad with a friction pad since the use of a friction pad does not require a magnetically compatible flywheel which could reduce the manufacturing cost of the biasing mechanism.

10. As to claim 24, Chen discloses a modified mechanism as described above (see discussion of claim 19). Chen also discloses that the biasing member (244) provides a substantially linear resistance when subjected to elastic deformation (see Figs. 2 & 3).

11. As to claim 26, Chen discloses a tensioning mechanism comprising a rod (242) acting on a brake (23), a member (22) permitting adjustment of a force between the flywheel (12) and the brake by the positioning of the rod and a biasing member (244) urging the rod towards the brake wherein the biasing member can be elastically deformable away from a rest position by displacing the force transmitting member away from the flywheel to reduce contact pressure between the pad and the flywheel (see Figs. 2 & 3). Chen does not disclose that the brake is a friction brake. The examiner takes Official Notice that the prior art includes brakes that are friction pads. At the time

Art Unit: 3764

of the invention, it would have been obvious to a person of ordinary skill in the art to substitute Chen's magnetic brake with a friction brake since the use of a friction brake does not require a magnetically compatible flywheel which could reduce the manufacturing cost of the biasing mechanism.

Allowable Subject Matter

12. Claims 11-15, 17 and 18 are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tam Nguyen whose telephone number is 571-272-4979. The examiner can normally be reached on M-F 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on 571-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

December 15, 2006


(JACKIE) TAN-UYEN HO
PRIMARY EXAMINER

12/18/06